UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Pat. # 3,844,600
3,164,255
3,572,654
2,801,752
3,945,501

PATCAP, LLC **c/o BDB AGENT CO.** **3800 Embassy Parkway, Suite 300** **Akron, Ohio 44333** **Relator** **vs.** **LEGGETT & PLATT, INC.** **d/b/a GILLIS-JARKE** **Number 1 Leggett Road** **Carthage, Missouri 64836** **and** **c/o Statutory Agent** **C T Corporation System** **1300 East 9th Street** **Cleveland, OH 44114** **Defendant.**	)	**CASE NO.:** **JUDGE:** **COMPLAINT AND JURY DEMAND**

COMPLAINT AND JURY DEMAND

Qui tam relator PatCap, LLC ("PatCap"), for its Complaint against Defendant Leggett & Platt, Inc., d/b/a Gillis-Jarke ("Defendant"), alleges as follows:

BACKGROUND

1. This is an action for false patent marking under Title 35, Section 292, of the United States Code.

2. Defendant has marked upon, affixed to, and/or used in advertising in connection with such products the word "patent" and/or words or numbers importing that the product is patented, while Defendant knew that the articles were improperly marked.

See, The Forest Group, Inc. v. Bon Tool Co., 590 F.2d 1295, 1302-04 (Fed. Cir., 2009). More specifically, Defendant has violated 35 U.S.C. § 292(a) by using invalid and unenforceable patent rights in advertising with the purpose of deceiving the public.

3. 35 U.S.C. § 292 exists to provide the public with notice of a party's valid and enforceable patent rights.

4. False marking deters innovation and stifles competition in the marketplace. More specifically, falsely marked articles that are otherwise within the public domain deter potential competitors from entering the same market and confuse the public.

5. False marks may also deter scientific research when an inventor sees a mark and decides to forego continued research to avoid possible infringement.

6. False marking can cause unnecessary investment in costly "design arounds" or result in the incurring of unnecessary costs to analyze the validity or enforceability of a patent whose number has been marked upon a product with which a competitor would like to compete.

7. False marking deceives the public into believing that a patentee controls the article in question, and permits the patentee to impermissibly extend the term of its monopoly.

8. False marking also increases the cost to the public of ascertaining whether a patentee in fact controls the intellectual property embodied in an article. More specifically, in each instance where it is represented that an article is patented, a member of the public desiring to participate in the market for the marked article must incur the cost of determining whether the involved patents are valid and enforceable.

9. False markings may also create a misleading impression that the falsely marked product is technologically superior to other available products, as articles bearing the term "patent"

may be presumed to be novel, useful, and innovative.

10. 35 U.S.C. § 292 specifically authorizes *qui tam* actions to be brought by any person on behalf of the United States government. By permitting members of the public to sue on behalf of the government, Congress allows individuals to help control false marking when the U.S. government does not have the resources to do so.

THE PARTIES

11. PatCap, LLC is an Ohio limited liability company with a mailing address of c/o BDB Agent Co., 3800 Embassy Parkway, Akron, Ohio 44333.

12. PatCap exists to conduct all lawful business, including but not limited to enforcing the false marking statute as specifically permitted by 35 U.S.C. § 292.

13. In this action, PatCap represents the United States and the public, including Defendant's existing and future competitors.

14. Upon information and belief, Leggett & Platt, Inc., Inc. is a Missouri corporation with its principal place of business at Number 1 Leggett Road, Carthage, Missouri 64836.

15. Defendant is registered to do business in the state of Ohio. Further, Defendant, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units, regularly conducts and transacts business throughout the United States, including in Ohio and within the Northern District of Ohio.

JURISDICTION AND VENUE

16. This Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

17. This Court has personal jurisdiction over Defendant. Defendant has conducted

and does conduct business within the State of Ohio. Defendant, directly or through subsidiaries or intermediaries, offers for sale, sells, marks and/or advertises the products that are the subject of this Complaint in the United States, the State of Ohio, and the Northern District of Ohio.

18. Upon information and belief, Defendant has voluntarily sold the products that are the subject of this Complaint in this District, either directly to customers in this District or through intermediaries with the expectation that the products will be sold and distributed to customers in this District. These products have been and continue to be purchased and used by consumers in the Northern District of Ohio. Defendant has committed acts of false marking within the State of Ohio and, more particularly, within the Northern District of Ohio.

19. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1395(a), because (i) Defendant's products that are the subject matter of this cause of action are advertised, marked, offered for sale, and/or sold in various retail stores and/or on the Internet in this District; (ii) a substantial part of the events or omissions giving rise to the claim occurred in this District; and (iii) Defendant is subject to personal jurisdiction in this District, as described above.

20. PatCap brings this action under 35 U.S.C. § 292, which expressly provides that any person may sue for the civil monetary penalties imposed for each false patent marking offense.

FACTS

21. PatCap incorporates by reference the foregoing paragraphs as if fully set forth herein.

22. Upon information and belief, Defendant is a relatively large, sophisticated company.

23. Upon information and belief, Defendant has, or regularly retains, sophisticated legal counsel, including intellectual property counsel.

24. Upon information and belief, Defendant, and its related entities, have years of experience applying for patents, obtaining patents, marking its products with patents, and advertising its products as "patented".

25. Defendant, and its related entities, have been involved in several patent litigation matters, including initiating several patent infringement actions. *See e.g., L&P Prop. Mgmt. Co. v. JTMD, LLC*, 2007 U.S. Dist. LEXIS 5949 (E.D. Mich., Jan. 29, 2007); *Leggett & Platt, Inc. v. Lozier, Inc.*, 2005 U.S. Dist. LEXIS 9637 (W.D. Wisc., May 17, 2005); and *Leggett & Platt v. Hickory Springs Mfg. Co.*, 132 F.Supp.2d 643 (N.D. Ill., 2001).

26. Upon information and belief, Defendant maintains, or its intellectual property counsel maintains on Defendant's behalf, an intellectual property docketing system with respect to Defendant's intellectual property rights, including Defendant's patents.

27. Defendant regularly uses the term "patent" or "patent pending", or other words or numbers importing that a product is covered by a valid and enforceable patent, in the advertising of its products for sale.

28. Defendant knows that 35 U.S.C. § 292 prohibits a person from marking a product with an expired patent number.

29. Each false marking on the products identified in this Complaint is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

30. Defendant's false marking of its products has wrongfully stifled competition with respect to such products thereby causing harm to PatCap, the United States, and the public.

31. Defendant has wrongfully and illegally advertised patent monopolies which it does not possess and, as a result, has benefited by maintaining a substantial market share with respect to the

products referenced in this Complaint.

32. Defendant has violated 35 U.S.C. § 292, which prohibits a person from marking a product with an expired patent number.

COUNT 1

FALSE MARKING

33. PatCap incorporates by reference the foregoing paragraphs as if fully set forth herein.

34. The application for United States Patent No. 3,164,255 (the "'255 Patent"), titled *Modular cantilever arm rack,* was filed on April 26, 1962 and issued by the United States Patent and Trademark Office ("USPTO") on January 5, 1965. *See* Exhibit A.

35. The '255 Patent expired no later than April 26, 1982, more than 28 years ago.

36. Defendant knew that the '255 Patent expired at least as early as 1982.

37. As of September 30, 2010, Defendant continues to use the '255 Patent in advertising in connection with the following product (the "Button-On Product") made, used, offered for sale or sold by Defendant within the United States, despite the fact that the '255 Patent expired more than 28 years ago: Button-On Medium Duty Cantilever Rack. *See* Exhibit B, p. 7 (The portions of the Defendant's 2008 Standard Product Catalog ("2008 Catalog") referenced in this Complaint, including the advertisement for the Button-On Product, as well as the first two and last pages. The 2008 Catalog can be obtained in its entirety at http://www.leggettspg.com/catalogs/material-handling-catalog.pdf (last retrieved September 30, 2010)).

38. Upon information and belief, Defendant continues to mark upon the Button-On Product, or the packaging of the Button-On Product, the '255 Patent, despite the fact that the '255 Patent expired more than 28 years ago.

39. Defendant updated the 2008 Catalog, including its copyright notice, at least as recently as

2008 but, upon information and belief, purposefully continued to use the '255 Patent in advertising the Button-On Product with the intent to deceive the public, despite knowing the '255 Patent was expired. *See* Exhibit B (last page).

40. Defendant knew or should have known that the use of an expired and invalid patent in advertising of the Button-On Product and marking the Button-On Product with an expired and invalid patent violates 35 U.S.C. § 292, which only authorizes marking on a "patented" article.

41. Defendant intended to deceive the public by using an expired and unenforceable patent in advertising in connection with the Button-On Product and marking or causing to be marked the Button-On Product with such a patent, despite knowing that the '255 Patent expired more than 28 years ago.

42. The application for United States Patent No. 3,512,654 (the "'654 Patent"), titled *Modular cantilever adjustable arm rack and joint assembly,* was filed on May 9, 1968 and issued by the USPTO on May 19, 1970. *See* Exhibit C.

43. The '654 Patent expired no later than May 9, 1988, more than 22 years ago.

44. Defendant knew that the '654 Patent expired at least as early as 1988.

45. As of September 30, 2010, Defendant continues to use the '654 Patent in advertising in connection with the following products (collectively, the "Steeltree Products") made, used, offered for sale or sold by Defendant within the United States, despite the fact that the '654 Patent expired more than 22 years ago: (i) Steeltree 25 Series Standard Cantilever Rack; and (ii) Steeltree 60 Series Heavy Duty Cantilever Rack. *See* Exhibit B, pp. 11, 13.

46. Upon information and belief, Defendant continues to mark upon the Steeltree Products, or the packaging of the Steeltree Products, the '654 Patent, despite the fact that the '654 Patent expired more than 22 years ago.

47. Defendant updated the 2008 Catalog, including its copyright notice, at least as recently as 2008 but, upon information and belief, purposefully continued to use the '654 Patent in advertising the Steeltree Products with the intent to deceive the public, despite knowing the '654 Patent had expired. *See* Exhibit B (last page).

48. Defendant knew or should have known that the use of an expired and invalid patent in advertising of the Steeltree Products and marking the Steeltree Products with an expired and invalid patent violates 35 U.S.C. § 292, which only authorizes marking on a "patented" article.

49. Defendant intended to deceive the public by using an expired and unenforceable patent in advertising in connection with the Steeltree Products and marking or causing to be marked the Steeltree Products with such a patent, despite knowing that the '654 Patent expired more than 22 years ago.

50. The application for United States Patent No. 2,801,752 (the "'752 Patent"), titled *Modular stacking unit,* was filed on December 3, 1954 and issued by the USPTO on August 6, 1957. *See* Exhibit D.

51. The '752 Patent expired no later than December 3, 1974, more than 35 years ago.

52. Defendant knew that the '752 Patent expired at least as early as 1974.

53. As of September 30, 2010, Defendant continues to use the '752 Patent in advertising in connection with the following product (the "Mini-Module Product") made, used, offered for sale or sold by Defendant within the United States, despite the fact that the '752 Patent expired more than 35 years ago: Mini-Module Stacking Rack. *See* Exhibit B, p. 19.

54. Upon information and belief, Defendant continues to mark upon the Mini-Module Product, or the packaging of the Mini-Module Product, the '752 Patent, despite the fact that the '752 Patent expired more than 35 years ago.

55. Defendant updated the 2008 Catalog, including its copyright notice, at least as recently as 2008 but, upon information and belief, purposefully continued to use the '752 Patent in advertising the Mini-Module Product with the intent to deceive the public, despite knowing the '752 Patent had expired.

56. Defendant knew or should have known that the use of an expired and invalid patent in advertising of the Mini-Module Product and marking the Mini-Module Product with an expired and invalid patent violates 35 U.S.C. § 292, which only authorizes marking on a "patented" article.

57. Defendant intended to deceive the public by using an expired and unenforceable patent in advertising in connection with the Mini-Module Product and marking or causing to be marked the Mini-Module Product with such a patent, despite knowing that the '752 Patent expired more than 35 years ago.

58. The application for United States Patent No. 3,945,501 (the "'501 Patent"), titled *Storage rack with internestable stacking attachments,* was filed on April 14, 1975 and issued by the USPTO on March 23, 1976. *See* Exhibit E.

59. The '501 Patent expired no later than April 14, 1995, more than 15 years ago.

60. Defendant knew that the '501 Patent expired at least as early as 1995.

61. As of September 30, 2010, Defendant continues to use the '501 Patent in advertising in connection with the following product (the "Cupl-Up Product") made, used, offered for sale or sold by Defendant within the United States, despite the fact that the '501 Patent expired more than 15 years ago: Cupl-Up Pallet Stacking Frame. *See* Exhibit F, pp 19 (The portions of the Defendant's 2007 Catalog ("2007 Catalog") referenced in this Complaint, including the advertisement for the Cupl-Up Product, as well as the first two and last pages. The 2007 Catalog can be obtained in its entirety at http://www.jarke.com/products/jarke-catalog.pdf (last retrieved September 30, 2010)).

62. Upon information and belief, Defendant continues to mark upon the Cupl-Up Product, or the packaging of the Cupl-Up Product, the '501 Patent, despite the fact that the '501 Patent expired more than 15 years ago.

63. Defendant updated the 2007 Catalog, including its copyright notice, at least as early as 2007 but, upon information and belief, purposefully continued to use the '501 Patent in advertising the Cupl-Up Product with the intent to deceive the public, despite knowing the '501 Patent was expired.

64. Defendant knew or should have known that the use of an expired and invalid patent in advertising of the Cupl-Up Product and marking the Cupl-Up Product with an expired and invalid patent violates 35 U.S.C. § 292, which only authorizes marking on a "patented" article.

65. Defendant intended to deceive the public by using an expired and unenforceable patent in advertising in connection with the Cupl-Up Product and marking or causing to be marked the Cupl-Up Product with such a patent, despite knowing that the '501 Patent expired more than 15 years ago.

66. The application for United States Patent No. 3,844,600 (the "'600 Patent"), titled *Modular storage rack for cylindrical loads,* was filed on October 19, 1973 and issued by the USPTO on October 29, 1974. *See* Exhibit G.

67. The '600 Patent expired no later than October 19, 1993, more than 16 years ago.

68. Defendant knew that the '600 Patent expired at least as early as 1993.

69. As of September 30, 2010, Defendant continues to use the '600 Patent in advertising in connection with the following product (the "Coilgard Product") made, used, offered for sale or sold by Defendant within the United States, despite the fact that the '600 Patent expired more than 16 years ago: Coilgard Heavy Duty Coil. *See* Exhibit F, p. 23.

70. Upon information and belief, Defendant continues to mark upon the Coilgard Product, or

the packaging of the Coilgard Product, the '600 Patent, despite the fact that the '600 Patent expired more than 16 years ago.

71. Defendant updated the 2007 Catalog, including its copyright notice, at least as recently as 2007, after the expiration of the '600 Patent, but purposefully continued to use the '600 Patent in advertising the Coilgard Product with the intent to deceive the public, despite knowing the '600 Patent had expired.

72. Defendant knew or should have known that the use of an expired and invalid patent in advertising of the Coilgard Product and marking the Coilgard Product with an expired and invalid patent violates 35 U.S.C. § 292, which only authorizes marking on a "patented" article.

73. Defendant intended to deceive the public by using an expired and unenforceable patent in advertising in connection with the Coilgard Product and marking or causing to be marked the Coilgard Product with such a patent, despite knowing that the '600 Patent expired more than 16 years ago.

PRAYER FOR RELIEF

WHEREFORE, Relator, PatCap, LLC requests the Court, pursuant to 35 U.S.C. § 292, to:

A. Enter judgment against Defendant and in favor of PatCap for the violations alleged in this Complaint;

B. Enter an injunction prohibiting Defendant, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from further violating 35 U.S.C. § 292 by using the '255 Patent, the 654 Patent, the '752 Patent, the '501 Patent, and/or the '600 Patent in advertising, or marketing, selling or offering for sale any product that is marked (including

packaging) with the '255 Patent, the 654 Patent, the '752 Patent, the '501 Patent, and/or the '600 Patent;

C. Enter an injunction ordering Defendant to recall all products, including, without limitation, the Button-On Product, the Steeltree Products, the Mini-Module Product, the Cupl-Up Product, and the Coilgard Product, that Defendant has sold, caused to be sold or otherwise caused to be placed into commerce that were marked with the '255 Patent, the 654 Patent, the '752 Patent, the '501 Patent, and/or the '600 Patent, after the expiration date of said patents;

D. Order Defendant to pay a civil monetary fine of up to $500 per false marking violation, one-half of which shall be paid to the United States and one-half of which shall be paid to PatCap;

E. Enter a judgment and order requiring Defendant to pay PatCap prejudgment and post-judgment interest on the damages awarded;

F. Order Defendant to pay PatCap's costs and attorney fees; and

G. Grant PatCap such other and further relief as it may deem just and equitable.

DEMAND FOR JURY TRIAL

Relator demands a trial by jury of any and all issues triable of right by a jury in the above-captioned action.

DATED: September 30, 2010

Respectfully submitted:

/s/ David J. Hrina
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
FOR THE EASTERN DIVISION

PATCAP, LLC,	**CASE NO. 5:10-CV-02212-SL**
RELATOR,	**JUDGE SARA LIOI**
v.	
LEGGETT & PLATT, INCORPORATED,	**STIPULATIONS AND STIPULATED DISMISSAL WITH PREJUDICE**
DEFENDANT.	

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, Plaintiff/Relator Patcap, LLC ("PCL"), acting on behalf of itself, as a member of the general public, and as a *qui tam* relator on behalf of the United States of America, and Defendant Leggett & Platt, Incorporated ("L&P") jointly stipulate that PCL and L&P have executed a Settlement Agreement and Mutual Release (the "Settlement Agreement") resolving the claims asserted by PCL on behalf of itself, the United States of America ("United States"), and the general public, against L&P in the above captioned matter without any admission of liability, with payment made to, and accepted by the United States Government, under the Settlement Agreement. PCL, the United States, the general public, and L&P are jointly referred to herein as the "Parties".

The Parties further stipulate that any and all claims by PCL, on behalf of itself, as a member of the general pubic, and as a *qui tam* relator on behalf of the United States, regarding L&P's alleged false marking or advertising or causing or contributing to false

marking or advertising under 35 U.S.C. §292 (or any other federal statute) of any product manufactured or sold are fully resolved and hereby dismissed with prejudice.

The Parties further stipulate that to the extent any other claims for false marking under 35 U.S.C. §292 or any other statute related to false marking or false advertising exist against L&P by or on behalf of the United States or the general public such claims are hereby dismissed with prejudice.

The Parties further stipulate that any future litigation brought against L&P, its subsidiaries, affiliates, directors, officers, agents, contractors, employees, successors and/or assigns (collectively, the "L&P Released Parties") under 35 U.S.C. §292 or any other statute related to false marking or false advertising on behalf of the United States and/or the general public with regard to any existing product manufactured or sold by the L&P Released Parties is barred.

The Parties further stipulate that any future litigation brought against the L&P Released Parties under 35 U.S.C. §292 or any other statute related to false marking or false advertising on behalf of the United States and/or the general public with regard to patent numbers, including but not limited to U.S. Patent Nos. 3,164,255, 3,512,654, 2,801,752, 3,945,501, and 3,844,600 (collectively, the "Patents"), is barred.

The Parties further stipulate that the L&P Released Parties and those acting in concert therewith and/or selling products manufactured by L&P Released Parties may have a reasonable period of time in which to sell inventory that has been marked with one or more of the Patents on or before the date of this entry without further liability.

The Parties further stipulate that PCL has the authority to act on behalf of the United States and the general public pursuant to 35 U.S.C. §292.

The Parties further stipulate that PCL is in privity with the United States and the general public.

Pursuant to the Settlement Agreement, this Court shall retain jurisdiction over any dispute over or action to enforcement the Settlement Agreement.

DATED: February 26, 2011

s/ David J. Hrina (by consent)
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IT IS SO ORDERED.

HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE
March 4, 2011